

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Russell Brimer and Olympia Tools International, Inc.

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Olympia Tools International, Inc. (“Olympia”), with Brimer and Olympia collectively referred to as the “Parties.” Brimer is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Olympia employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (Proposition 65).

#### 1.2 General Allegations

Brimer alleges that Olympia has manufactured, distributed and/or sold tape measures with hand straps which contain lead (hereinafter the “Listed Chemical”), without the requisite Proposition 65 warnings. The Listed Chemical is on the Proposition 65 list as a chemical known to cause birth defects and other reproductive harm.

#### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: tape measures with hand straps which contain lead and that are offered for sale in California, such as, but not limited to, *Olympia-Tools 18pc Home Tool Kit (#8 83652 88017 2)*. All such tape measures with hand straps are referred to hereinafter as the “Products.”

#### 1.4 Notice of Violation

On or about June 17, 2010, Brimer served Olympia and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Olympia and public enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 for failing to warn consumers that the Products that Olympia sold exposed users in California to the Listed Chemical.

**1.5 No Admission**

Olympia denies the material, factual and legal allegations contained in Brimer's Notice and maintains that all Products that it has sold and distributed in California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Olympia of any fact, finding, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Olympia of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Olympia. However, this section shall not diminish or otherwise affect Olympia's obligations, responsibilities, and duties under this Settlement Agreement.

**1.6 Execution Date**

For purposes of this Settlement Agreement, the term "Execution Date" shall mean the date on which this Agreement is signed by all Parties.

**1.7 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean January 7, 2011.

**2. INJUNCTIVE RELIEF: REFORMULATION**

Olympia hereby agrees that it shall only distribute and/or sell, or cause to be distributed, and/or sold, Products in California that contain less than or equal to 100 ppm of lead when analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3050B or equivalent methods and which yield no more than 1.0 micrograms of lead when analyzed pursuant to NIOSH Test Method 9100 performed on any accessible component (i.e. any component part that may be handled, touched or mouthed during the reasonably foreseeable use or misuse by a consumer).

**PENALTIES PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

In settlement of all the claims referred to in this Agreement against it, Olympia shall make payments totaling \$2,500 in civil penalties, as follows:

Olympia shall make a civil penalty payment of \$2,500 to be apportioned in accordance with Health & Safety Code § 25249.12 (c)(1) and (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")

and the remaining 25% of these penalty monies remitted to Brimer as provided by Health & Safety Code § 25249.12(d). Olympia shall issue two separate checks for the penalty payment: (a) one check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$1,875, representing 75% of the total penalty, and (b) one check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$625, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,875. The second 1099 shall be issued to Brimer in the amount of \$625, whose address and tax identification number shall be furnished, upon request, at least five (5) calendar days before payment is due. The payments shall be delivered on or before January 31, 2011, at the address set forth below.

The payment shall be delivered to the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The parties reached an accord on the compensation due to Brimer and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Olympia shall reimburse Brimer’s counsel for fees and costs, incurred as a result of investigating, bringing this matter to Olympia attention, and negotiating a settlement in the public interest. Olympia shall pay Brimer and his counsel \$25,000 for all attorneys’ fees, expert and investigation fees, and related costs in three separate payments: \$10,000 on or before January 31, 2011, \$10,000 on or before February 28, and a final payment of \$5,000 due on or before March 31, 2011. The payments shall be issued in one or more checks made payable to “The Chanler Group” at the following address:

THE CHANLER GROUP  
Attn: Proposition 65 Controller  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710

Olympia shall issue a 1099 for attorneys' fees and costs paid to The Chanler Group, 2560 Ninth Street, Suite 214, Berkeley, CA 94710 (EIN: 94-3171522).

## **5. RELEASE OF ALL CLAIMS**

### **5.1 Brimer's Release of Olympia**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against Olympia and each of its wholesalers, licensors, licensees, auctioneers, retailers, distributors, franchisees, cooperative members, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees") that arise under Proposition 65, as such claims relate to Olympia alleged failure to warn about exposures to the Listed Chemical contained in the Products

This release shall not extend upstream to any entities that manufactured the Products for Olympia or any component parts thereof or to any distributors or suppliers who sold the Products or any component parts thereof to Olympia.

### **5.2 Olympia's Release of Brimer**

Olympia, on behalf of itself and its Releasees, waives any and all claims against Brimer, his attorneys, and other representatives for any and all actions taken by Brimer and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Products.

## **6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this

Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Olympia may provide written notice to Brimer of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this settlement agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

To Olympia:

Artem Kalajyan  
VP, Legal  
Olympia Tools International, Inc.  
18051 Arenth Ave  
City of Industry, CA 91748

To Brimer:

Proposition 65 Coordinator  
HIRST & CHANLER LLP  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710-2565

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or .pdf signature shall be as valid as the

original.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Brimer and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**11. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

**12. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 1-18-11

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
RUSSELL BRIMER

By: \_\_\_\_\_  
[ Artem Kalajyan ], [ VP, Legal ]  
OLYMPIA TOOLS INTERNATIONAL, INC.

original.

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AGREED TO:

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Date: \_\_\_\_\_

Date: 1-18-11 \_\_\_\_\_

By: \_\_\_\_\_  
RUSSELL BRIMER

By: \_\_\_\_\_  
[ *Artem Kalajyan* ], [ *VP, Legal* ]  
OLYMPIA POOLS INTERNATIONAL, INC.